

PATRICIA A. CUTLER, Assistant U.S. Trustee (#50352)
STEPHEN L. JOHNSON, Trial Attorney (#145771)
EDWARD G. MYRTLE, Trial Attorney (DC#375913)
MARGARET H. McGEE, Trial Attorney (#142722)
U.S. Department of Justice
Office of the United States Trustee
250 Montgomery Street, Suite 1000
San Francisco, CA 94104
Telephone: (415) 705-3333
Facsimile: (415) 705-3379

Attorneys for United States Trustee
Linda Ekstrom Stanley

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	)	No.	01-30923 DM
PACIFIC GAS AND ELECTRIC	)	Chapter	11
COMPANY,	)	Date:	July 18, 2001
Debtor.	)	Time:	9:30 a.m.
	)	Ctrm:	Hon. Dennis Montali
	)		235 Pine Street, 22 nd Floor
	)		San Francisco, California

UNITED STATES TRUSTEE'S
OBJECTION TO JOINT MOTION OF DEBTOR AND UNSECURED
CREDITORS COMMITTEE FOR ORDER ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION, ETC.

Linda Ekstrom Stanley, United States Trustee, submits this objection to the Joint Motion of Debtor and Unsecured Creditors Committee for Order Establishing Procedures for Interim Compensation Etc. (the "Knudsen Motion").

The Knudsen Motion should not be granted because it does not permit effective or efficient oversight over professional fees charged to the estate. The Knudsen Motion has numerous deficiencies which include an interim allowance of 90% of fees, an amount that is too high and inconsistent with both national and local practice. The Knudsen Motion would only require fee applications be filed two times a year, a significant departure from ordinary

1 practice and an unwarranted delay. The proposal also contains a clause which compels a
2 party who objects to fees to seek an order of the court sustaining the objection or the fees
3 can be paid in full. This provision improperly shifts the burden of proof from the fee
4 proponent, where it belongs, to the objector.

5 In an effort to streamline the enormous burden of reviewing fees, the United States
6 Trustee has requested the firms paid on an hourly basis agree to electronically transmit
7 their monthly invoices and fee applications to the United States Trustee. The information
8 will be uploaded to a database program to assist the Office of the United States Trustee
9 with its analysis. With the sole exception of the Howard Rice firm, which appears to have
10 accepted the request, none of the professionals have responded to the request for
11 electronic submission. The United States Trustee urges the Bankruptcy Court order the
12 professionals to submit their monthly invoices and full fee applications to her office
13 electronically to expedite and assist her office's review of the fees.

14 Finally, the United States Trustee urges the Court employ the *Knudsen* procedures
15 adopted by the Bankruptcy Court for the Southern District of New York for this case. These
16 are described in detail below and a copy of the Southern District's administrative order is
17 attached as Exhibit "C" to the Request for Notice. The procedures authorized by the
18 Southern District closely follow local and national practice, and carefully balance the
19 professional's interest in timely payment of fees with the statutory goal of meaningful
20 oversight.

21 **I. BACKGROUND**

22 To the extent the *Knudsen* procedure referred to in the motion is accepted in the
23 Northern District, the practice differs significantly from the relief requested here. The typical
24 *Knudsen* proposal calls for monthly allowance of fees and expenses upon submission of
25 invoices, with a holdback of 20% of fees and full payment of costs. If an objection is
26 submitted by any party, 80% of the fees which were not objected to can be paid as well as
27 all costs. No costs or fees which have been objected to are paid. The burden remains on
28 the applicant to set a hearing to obtain payment of fees if there is an objection. Full interim

1 requests for compensation (including narratives) must be submitted every 120 days. See
2 *Request for Judicial Notice*, Exhibits A and B (*Knudsen* Orders in the chapter 11 cases of
3 Northpoint Communications Group, Inc. and Pacific Gateway Express, Inc.). The
4 differences are that here, the professionals seek 90% of fees, do not impose on themselves
5 the burden of quarterly fee applications, and put the burden on the objecting party to set the
6 matter for hearing. If the objecting party does not set the matter for hearing, the fees can
7 be paid, regardless of whether the objection is meritorious.

8 The great number of professionals employed in this case is likely to generate
9 significant fees and costs. The United States Trustee has tried to anticipate this and the
10 burden attending it by asking the firms to transmit their monthly invoices and fee
11 applications to the United States Trustee electronically. *Declaration of Patricia Martin*,
12 Exhibits “A” , “B” and “D”. Specifically, the United States Trustee asked the firms to transmit
13 their complete time entries, including the names of the timekeepers, the time spent, the
14 category of work and the amount of the bill. Howard Rice has agreed it can do this and has
15 worked with the Office of the United States Trustee to make the upload process smooth.
16 Martin Decl. ¶ 4. The Office of the United States Trustee sent letters to the remaining firms
17 central to the case (including counsel for the Official Committee of Unsecured Creditors)^{1/}
18 asking them to agree to the same procedure, but has not received any responses to date.
19 Martin Decl. ¶ 5-8. The United States Trustee will use the electronically transmitted
20 information to analyze the bills. Martin Decl. ¶ 9.

21 **II. ARGUMENT**

22 **A. The Firms Should Submit Their Bills Electronically to the United States** 23 **Trustee**

24 The complexity and size of this case is understood. The United States Trustee,
25 recognizing this, has implemented a computerized system which will allow her office to
26 review meaningfully the numerous monthly billing statements professionals will submit. It

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28 ^{1/} Since the date of these letters, other firms have been employed by court order, including
PriceWaterhouseCoopers. The United States Trustee believes all the hourly rate firms seeking the benefit of the
Knudsen procedure should submit information electronically.

1 will be possible to sort the information in a variety of ways to facilitate review of the nature of
2 the services performed, the efficiency of the professionals and the mathematical accuracy
3 of the bills. In short, it should ensure a thorough and expeditious review of professional
4 fees by the Office of the United States Trustee.

5 The United States Trustee understands electronic submission of billing statements
6 has been a practice for several years and should not be a significant burden to the
7 professionals. In fact, the Howard Rice firm advised it is capable of complying with the
8 request. The United States Trustee urges any order should require compliance with her
9 request for electronic transmission of billing information.

10 **B. The Proposed *Knudsen* Is Not Consistent with Local Practice**

11 Local practice differs from the proposal in the *Knudsen* Motion. Local practice
12 generally requires (1) a 20% holdback; (2) interim applications every 3 months; and (3)
13 professionals bear the burden of seeking full compensation. To the extent the *Knudsen*
14 Motion is inconsistent and does not justify the difference, it should be denied.

15 **C. Ample Case Law Supports a More Restricted Order Than Proposed Here**

16 The *Knudsen* Motion fails to discuss or mention several cases with inconsistent
17 outcomes to the relief requested.² In each of these unmentioned and uncited cases, the
18 relief approved by the bankruptcy court was similar to the *Knudsen* orders previously
19 approved in the San Francisco Division of the Northern District, but dissimilar to the
20 requested relief.

21 In *In re Mariner Post-Acute Network, Inc.*, 257 B.R. 723, 726 (Bankr. D. Del. 2000),
22 the bankruptcy court approved a *Knudsen* order permitting the debtor to pay 80% of
23 submitted time, 100% of expenses absent objection on 20-days' notice to the United States
24 Trustee. The *Mariner* court ordered the applicant, not the objecting party, to seek court
25 approval for any fees which raised an objection, or take 80% of the uncontested fees. The
26 court also required fee applications every three months.

27
28 ² The only case referred to in this context by movants is *In re Circle K Corp.*, 191 B.R. 426, 432 (Bankr. D. Ariz. 1996). That court, like those the United States Trustee cites, approved an 80% standard for fee payments.

1 Similarly, in *In re Pittsburgh Corning Corp.*, 255 B.R. 162, 164 (Bankr. W.D. Penn.
2 2000), the court, referring to an “administrative order” in use in its district, approved a
3 *Knudsen* order permitting the applicants to take 80% of fees and 100% of costs. The
4 bankruptcy court also ordered full fee applications every 3 months, and set all disputed fees
5 over for hearing in connection with the quarterly fee applications.

6 The decisions in these cases show the requested relief overreaches what is typically
7 allowed or necessary.

8 **D. The Court Should Adopt the Well Conceived Approach of the Bankruptcy**
9 **Court for the Southern District of New York**

10 The United States Trustee submits the local guideline adopted by the Bankruptcy
11 Court for the Southern District of New York, is an appropriate model for the *Knudsen* order
12 in this case, should the court determine to allow the interim compensation scheme
13 requested. The Bankruptcy Court for the Southern District of New York has a formalized
14 approach to *Knudsen* orders and has promulgated an “administrative order” entitled “Order
15 Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Monthly
16 Compensation and Reimbursement of Expenses of Professionals” (the “N.Y. Administrative
17 Order”). See *Request for Notice*, Exhibit “C”. It can be found on the Internet at
18 <http://www.nysb.uscourts.gov/orders/m219.pdf>.

19 The N.Y. Administrative Order is complete and thoughtful. It provides for advance
20 payment of 80% of fees and 100% of expenses, absent objection, just as the decisions
21 referred to above do, and just as local practice has developed. The Southern District bench
22 requires full fee applications be filed quarterly. The N.Y. Administrative Order preserves
23 any objections not made to a monthly bill and provides that any objections to fees be
24 resolved on a quarterly basis in connection with the full fee applications.

25 To the extent the Court approves the request, the United States Trustee supports
26 entry of an order consistent with the N.Y. Administrative Order. The N.Y. Administrative
27 Order is a well drafted order which gives parties in interest clear instructions on handling
28 interim fee requests. It is superior to the requested relief here in several important respects.

Most important, the N.Y. Administrative Order provides that any disputes over

1 monthly allowances will be heard in connection with hearings on quarterly bills, a provision
2 which will limit substantially the tremendous burden on the Bankruptcy Court and parties in
3 interest. Given the sheer number of firms involved, this provision alone will be a
4 tremendous advantage. It will discourage what may be endless rounds of haggling over
5 fees (and the fees resulting from the disputed matter) every single month, and places the
6 burden of prosecution of the applications on the firms rather than parties in interest. It will
7 eliminate unnecessary paper and the complex task of reviewing and tracking that paper.
8 Firms will not be greatly disadvantaged because they will receive a substantial monthly
9 award of as much as 80% of their fees.

10 The order also limits the payment of fees to 80% rather than the 90% requested
11 here. This provision is consistent with local and national practice. Payment of 80% of
12 requested fees on account is significant and should assist firms with cash flow issues.
13 Withholding a higher amount will ensure professionals focus on the importance of interim
14 and final allowances.

15 The New York approach also requires quarterly fee application hearings. The
16 Knudsen Motion indicates fee applications will be submitted just twice a year. Knudsen
17 Motion 5:6-10. The United States Trustee urges the Bankruptcy Court require fee
18 applications every three months. By requiring submission of quarterly fees requests (rather
19 than every six months) the Bankruptcy Court will ensure timely resolution of disputes and
20 provide an excellent opportunity to “true up” the fee applications, objections and other
21 problems in a reasonable time frame. Timely submission of applications is critical to
22 understanding the administrative burden on the estate, especially because this burden must
23 be paid in full for debtor to exit chapter 11. Timely submission also ensures parties have an
24 opportunity to review complete fee applications near in time to the actual performance of
25 the work, which may help alleviate the problem of memory lapses. Quarterly fee
26 applications will take the guesswork out of knowing when the applications will be submitted
27 and permit the Court and parties in interest to plan in advance time for review of fee
28 applications.

1 The New York model would also increase the amount of time allowed to file
2 objections to permit meaningful review of the monthly bills. The Knudsen Motion calls for
3 any objection to be filed 10 days after service. This time frame is undeniably short and will
4 mean United States Trustee and other parties would only have a few days to review an
5 application. The N.Y. Administrative Order allows parties 15 days from receipt of the
6 monthly invoice to object, a much more reasonable approach.³⁷

7 The N.Y. Administrative Order would also eliminate a provision of the requested relief
8 which would place the burden of resolving fee disputes on the *objecting* party rather than
9 the applicant. It is the fee applicant, as movant, who properly bears the burden of proof.
10 Authorization to use a *Knudsen*-type order cannot be construed to shift the burden of proof
11 to the objecting party.

12 The proposed relief requires the parties submit their monthly invoices to the Court.
13 The N.Y. Administrative Order does not require submission to the bankruptcy court. The
14 United States Trustee urges the documents be filed given the size of the case and public
15 interest generated.

16 **E. Committee Member's Expenses Should be Submitted Monthly And**
17 **Approved Quarterly**

18 Committee counsel should file any expense reports for committee members with the
19 court on a monthly basis. It is not necessary for committee members to submit their
20 invoices and then have counsel duplicate that effort. The expense reports should be filed in
21 connection with the fee applications of the professionals. The reports filed should
22 enumerate, at a minimum, the name of the member, the expense reimbursement by item
23 (as counsel's bills would) and a brief description to show the expense is attributable to the
24 bankruptcy case. Objection deadlines should track the deadlines imposed for the hourly
25 professionals for simplicity – objections should be due 15 days from receipt. Committee
26

27 ³⁷ The United States Trustee acknowledges the 10-day time frame has been employed in San Francisco
28 before. See Request for Notice, Exhibit "A" and "B". The United States Trustee urges the court not to adopt this
provision because of the qualitative differences (size, complexity, sheer number of professionals) between this
case, Northpoint Communications Group, Inc. and Pacific Gateway Express, Inc.; the former has already
converted to chapter 7.

1 member expense reimbursement hearings should not wait for final allowance of fees for
2 professionals because it is conceivable members of the committee will resign or be
3 replaced and the delay would be difficult to manage.

4 **III. CONCLUSION**

5 For the foregoing reasons, the United States Trustee objects to the relief requested
6 and requests if the court enters an order approving the Knudsen Motion, the Court follow
7 the N.Y. Administrative Order attached as Exhibit "A" to the Request for Judicial Notice.
8 The United States Trustee also requests the professionals be ordered to transmit their
9 monthly invoices and fee applications to the United States Trustee electronically.

10 Date: July 13, 2001

Patricia A. Cutler
Assistant United States Trustee

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13 By:

Stephen L. Johnson
Attorneys for United States Trustee